IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Revision Application No.424 of l998

Miss Dominica R Khare ..Applicant
vs
Smt Saral M Bhade..Respondent

Mr.M.D.Angal for applicant absent
Ms Naina Thathe for Mr Oak for respondent

CORAM: B.H.MARLAPALLE J
Dated 23.8.2005

ORALL JUDGEMENT:

l. This civil revision application assails the order dated 27.2.l998 passed by the competent authority for Konkan Division at Mumbai allowing the application filed under section l3A(2) of the Bombay Rents Hotel and Lodging House(Control) Act,l947, for short the Bombay Rent Act. The applicant is the lessee who has been directed to hand over vacant and peaceful possession of the suit premises to the applicant landlady within 30 days and also pay to the landlady double the licence fee i.e. Rs.2400 per month from 2.4.l994 till she hand over the possession of the suit premises to the landlady.

2. One Venkatesh Mahadeo Rahatekar was a member of the Ruba Coop Housing Society, Thane and block no. 2 located on the ground floor in the building of the said society was allotted to him. He has executed a testamentary will dated l2.9.l98l and registered before the Sub-Registrar of Assurance, Thane on l4.9.l98l. By the said will he had bequeathed the said block no. 2 to his daughter Smt Saral wife of Madhusudan Bhade. Shri Venkatesh died on 30.4.l996 and the housing society transferred the said block no.2 in the name of his daughter Smt Saral Bhade and thus she became the landlady in respect of the said block. The said block was given to one Ms Clare Rangnath Khare on leave and licence basis as per the agreement signed between the parties on 2.5.l993 for a period of ll months i.e. from 2.5.l993 to l.4.l994. The monthly consideration agreed was Rs.l200 to be paid in advance every month and there was a security deposit of Rs.20,000. On expiry of the period of ll months the landlady sought possession of the suit premises from the lessee but there was no response. She went on calling upon the lessee to vacate the suit premises after l.4.l994 but her

efforts proved to be futile and, therefore, she was forced to issue the legal notice dated 7.5.l995. It appears that the lessee died on 7.5.l995 and the notice issued by the landlady was received by her daughter i.e. present applicant and she replied to the same on 27.5.l995. As the premises were not vacated the landlady filed an application under section l3A(2) of the Bombay Rent Act before the competent authority on or about 6.9.l996 and also stated that the lessee had not paid the agreed compensation from 2.4.l994 onwards.

3. The lessee appeared in response to the notice issued, filed written statement and thereafter remained absent for hearing or for cross examination of the landlady who had stepped in the witness box to prove her case. The competent authority considered the documentary evidence and held that the landlady was entitled to for a decree of eviction under Order l7 Rule 2 of CPC, by excepting the evidence of the landlady. Present applicant filed two separate applications,one for staying the order dated 20.3.l998 land the other for setting aside the said order. The competent

authority was pleased to reject both these applications by its order dated 26.3.l998.

4. The competent authority had issued notice and the applicant was called upon to file written statement on 23.l2.l996, which she did. Thereafter issues were framed and the evidence of the applicant was recorded on 3.4.l997 when the present applicant and her counsel remained absent. Based on the evidence of the landlady the application was decided on 3.4.l997. However on 28.4.l997 the present applicant filed an application for setting aside the exparte order and it was allowed on l.8.l997. Thereafter the case was fixed for recording evidence of the present applicant but on the given dates again she remained absent since 9.l0.l997 till 27.2.l998. The case was fixed for recording evidence of the present applicant on l8.2.l998, 24.2.l998, and also on 27.2.l998 but she remained absent and did not ensure that she would be represented by an advocate. The landlady therefore moved an application on 24.2.l998 and prayed for deciding the application for eviction on merits and without the evidence of the applicant.

It was in these circumstances that on 27.2.l998 the application filed by the landlady came to be decided and allowed as noted hereinabove.

5. The competent authority framed the following issues to decide the landlady's application and answered them accordingly:

> "l. Whether the applicant proves that she is the owner in respect of the licensed premises?-Proved
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> 2. Whether the applicant proves that the licensee did not quite or vacate from the licensed premises after the expiry of the licensed period?-Proved
>
> 3. Whether the applicant proves that she had sent the notice to the licensee for vacating premises? -Proved.
>
> 4. Whether the applicant proves that the compensation from the licensed premises is due and payable to her by the licensee? -

Proved.

5. Whether the respondent proves her tenancy on suit premises as alleged and whether the agreement dt 2.5.l993 was never acted upon as leave and licence agreement as alleged? -Not proved.

6. Whether the applicant is entitled to the relief as prayed for by her in the application? Yes

6. The learned counsel appearing for the landlady has placed on record a copy of the agreement dated 2.5.l993 to decide whether it was an agreement of leave and licence or tenancy. It would be necessary to consider the terms and conditions set out therein. In the preamble of the said agreement it is stated that the landlady is the owner of the premises and she was not occupying the same for her personal reasons and the suit premises were vacant temporarily. The lessee had requested the lessor to give on licence basis as a temporary facility the said flat together with fixtures and fittings

therein, as mentioned in the schedule therein and on the terms and conditions set out in the agreement . Some of the relevant terms and conditions of the said agreement are reproduced herein below:

l. The licensor hereby grants a permission to the licensee to enter into, look after and use the said flat no.2 in Ruba Coop Society Ltd Thane for a period of ll months from 2.5.l993 ending on l.4.l994 without without an intention to renew the same.

2. To allow the licensor or his authorised representative to inspect the said premises at any reasonable time during the period of the agreement.

3. To vacate with her family using the said premises alongwith their belongings on the termination of the agreement,if no renewal is agreed, and to deliver all the keys of the said premises to the licensor and as such to withdraw from the occupation of the

said premises.

4. To use the said premises for the purpose of residence only and .not for any other kind of antisocial, illegal, or immoral purpose or any act prejudicial to the norms of decency and ettiquetes.

5. Not to sub-let, part with or otherwise transfer the possession of the said flat.

6. Any notice served on the licensee shall be deemed to be properly served if addressed to the licensee and delivered at the address mentioned above.

7. The licensee shall not claim any tenancy rights and any other rights since the licence is granted under Section 52 of the Indian Easement Act.

8. It is specifically agreed by and between the parties that possession of the said premises shall always be with licensor and

licensee has been granted a personal licence to occupy the said premises for ll months.

7. It is clear from the averments made in the application that the original licensee had not vacated herself from the licenced premises and on her demise on 7.5.l995 her daughter i.e. present applicant continued to occupy the said premises. As per the landlady the applicant was a rank encroacher .Be that as it may, the terms and conditions of the lease agreement signed between the landlady and licensee were that of leave and licence and not an agreement for tenancy. Some of the documents which were brought on record before the competent authority were agreement of leave and licence at Exh A3, copy of notice dated 7.5.l995 issued by the landlady at Exh A4, reply given by the present applicant to the said notice at Exh A5 and so on.

8. The application was allowed in the absence of the present applicant on 3.4.l997 and on 28.4.l997 she had filed an application for setting aside the said order. This was allowed by the order dated

l.8.l997 . It is clear from the evidence on record that the present applicant failed to make use of the opportunities granted to her and she remained absent from 9.l0.l997, on 4 to 5 different dates when she was required to adduce evidence she remained absent and, therefore, the landlady submitted an application on 24.2.l998 before the competent authority to proceed to decide the application without evidence of the present applicant. The competent authority invoked his powers under Order l7 Rule 2 of CPC and decided the application. The second application for restoration has been rightly dismissed by the competent authority on 26.3.l998. Even in this revision application when Rule was granted by the order dated 24.4.l998 interim relief in terms of prayer clause (c) was granted on condition.However, Civil Application no.6702 of l998 filed by the landlady was allowed by this court on 2l.8.l998 and the interim relief granted was vacated.

9. The reasoning set out by the competent authority in support of the order of eviction does not suffer from any errors apparent on the face of

the record and the documentary evidence placed by the landlady before the competent authority has been analysed properly. The reasoning is supported by the said evidence and, therefore, no interference is called for with the impugned order in this revision application.

l0. In the premises the civil revision application fails and is hereby dismissed . Rule discharged with costs.